WIRELESS
TELE COMMUNICATIONS
FACILITIES SITING
ORDINANCE
OF THE
TOWN OF SULLIVAN
(Sullivan, Maine)

Proposed May 2001

Voting on Ordinance
May 3, 2001
Sullivan Special Town Meeting
Adopted May 3, 2001
SECTION 1 TITLE AND EFFECTIVE DATE

1.1 Title
This Ordinance shall be known as the Wireless Telecommunications Facilities Ordinance of the Town of Sullivan, Maine (hereinafter referred to as this "Ordinance")

1.2 Effective Date
This Ordinance becomes effective May 3, 2001 upon town voters approval at May 3, 2001, Special Sullivan Town Meeting

SECTION 2 AUTHORITY

This Ordinance is adopted, pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provision of Title 30-A, M.R.S.A., Section 3001 (Home Rule), the provisions of Title 30-A, M.R.S.A., Section 4351 (Zoning Ordinances) and the provisions of the Planning and Land Use Regulation Act, Title 30-A, M.R.S. A., Section 4312 et seq.

SECTION 3 PURPOSE

The purpose of this ordinance is to provide a process and set of standards for the construction and location of Wireless Telecommunications Facilities in order to; implement a municipal policy concerning the provision of wireless telecommunication services, and the siting of their facilities. Ensure that all telecommunications carriers providing facilities or services within the Town of Sullivan comply with the ordinances of the Town of Sullivan; ensure that the Town of Sullivan can continue to fairly and responsibly protect the public health, safety, welfare, and village/residential areas, encourage co-location of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community, and to enable the Town of Sullivan to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development. The purpose of this Ordinance is also to provide an environment where the citizens want to live and work, to protect the citizens of the town, the esthetic values, property values, community character, and to prevent adverse impact on residential and village areas with the Town of Sullivan.

SECTION 4 APPLICABILITY

This Ordinance shall apply to all construction and expansions of a wireless telecommunications facilities, new or pending applications, except as provided in Section 4.1.

4.1 Exemptions
The following are exempt from the provisions of this ordinance:


B. Amateur (Ham) Radio Stations. Amateur (Ham) radio stations licensed by the Federal Communications Commission (FCC) or CB Radio Antennas.
Section 4 Applicability (continued)

C. Parabolic Antenna. Parabolic antennas less than seven (7) feet in diameter that are an accessory use of the property.

D. Maintenance and Repair. Maintenance and repair of a wireless telecommunications facility and related equipment provided that there is no change in the height or any other dimension of the facility.

E. Antenna as Accessory Uses. An antenna that is an accessory use to a residential dwelling unit.

SECTION 5 REVIEW AND APPROVAL AUTHORITY

5.1 Approval Required
No person shall construct or expand a wireless telecommunications facility without approval of the Planning Board (PB) in accordance with the provisions of this Ordinance as follows:

A. Expansion of an Existing Facility and Co-Location. Approval by the PB is required for any expansion of an existing wireless telecommunications facility; accessory use of an existing wireless telecommunications facility; or co-location on an existing wireless telecommunications facility.

B. New Construction. Approval of the PB is required for the construction of a new telecommunications facility, within the allowed areas of Town.

5.2 Approval Authority
In accordance with Section 5.1 above, the PB shall review all applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with the provision of this Ordinance.

SECTION 6 APPLICATION PROCESS

6.1 Pre-application Meeting
A pre-application meeting shall be held with the Code Enforcement Officer (CEO), PB, and applicant or their representative to review the process.

6.2 Application
All persons seeking approval of the PB under this Ordinance shall submit an application in accordance with Building Code Ordinance (BCO) and as follows below. The CEO/PB shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

6.3 Application for Planning Board Approval
An application for approval by the PB must be submitted to the CEO, who then will place it on the agenda for the next PB meeting. The application must include the submission requirements contained in the Building Code Ordinance and the following information:

A. A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
Section 6 application process (continued)

B. A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above one hundred fifty (150) feet in height above ground level, except antennas located on rooftops, with a five (5) mile radius of the proposed facility, unless this information has been previously made available to the Town of Sullivan. This requirement may be met by submitting current information (within thirty (30) days of the date the application is filed) from the FCC Tower Registration Database.

C. Site Plan

1. Prepared and certified by a professional engineer registered in the State of Maine indication the location, type, and height of the proposed facility, antenna capacity, on-site and abutting, land uses means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes.

2. Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and

D. A scenic assessment consisting of the following:

1. Elevation drawings of the proposed facility, and any other proposed structures, showing the height above ground level.

2. A landscaping plan indicating the proposed placement of the facility on the site; location of existing Structures, trees, and other significant site features; the type and location of plants proposed to screen the facility, the method of fencing; the color of the structure; and the proposed lighting method.

3. Photo simulations of the proposed facility taken from perspectives determined by the PB, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

4. A narrative discussing:
   a. the extent to which the proposed facility would be visible from or within a designated scenic resource.
   b. the tree line elevation of vegetation within one hundred (100) feet of the facility, and
   c. the distance to the proposed facility from the designated scenic resource’s noted viewpoints.

E. A written description of how the proposed facility fits into the applicant’s telecommunications network; this submission requirement does not require disclosure of confidential business information.

F. Evidence demonstration that no existing building, site or structure can accommodate the applicant’s proposed facility, the evidence for which may consist of any one or more of the following:

1. Evidence that no existing facility are located within the targeted market coverage area as required to meet the applicant’s engineering requirements,

2. Evidence that existing facilities do not have sufficient height or cannot
be increased in height at a reasonable cost to meet the applicant’s engineering requirements.

3. Evidence that existing facilities do not have sufficient structural strength to support applicant’s proposed antenna and related equipment. Specifically:
   a. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities and these existing facilities cannot be reinforced to accommodate the new equipment.
   b. The applicant’s proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant’s proposed antenna.
   c. Existing or approved facilities do not have space on which planned equipment can be placed so it function effectively.

4. For facilities existing prior to the effective date of this Ordinance, the fees, costs, or contractual provision required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this Ordinance.

5. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure, and has been denied access.

G. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5),36 CER 60 and 800.

H. A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
   1. Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
   2. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
   3. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location;
   4. Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land cost, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment of accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate over the useful life span of the facility.
Section 6 application process (continued)

I. A form of surety approved by the PB to pay for the costs of removing the facility if it is abandoned.

J. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

6.4 Submission Waiver
Where the Planning Board makes written findings of fact that there are special circumstances of a particular application, it may waive portions of the submission requirements, unless otherwise indicated in this SECTION, provided that the applicant has demonstrated that the standards of this Ordinance have been or will be met, the public health, safety and welfare are protected, and providing the waivers do not have the effect of nullifying the intent and purpose of the Town of Sullivan Building Code Ordinance and this Ordinance.

6.5 Fees
1. Application Fee. An application fee (s) shall be in accordance with Section 4 of the Building Code Ordinance plus the actual cost of publishing the notice of application in a local newspaper.

SECTION 7 STANDARDS OF REVIEW

7.1 Planning Board Approval Standards
An application for approval by the PB under Section 5.1 shall meet the following standards.

A. Priority of Locations.
New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

1. Co-location on an existing wireless telecommunications facility
2. A new facility on public or private property in the Town of Sullivan

B. Design for Co-location.
A wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future co-location of at least three (3) additional wireless telecommunications facilities or providers. However, the PB may waive or modify this standard where the height limitation effectively prevents future co-location.

C. Height
A new wireless telecommunications facility must be no higher than two hundred (200) feet in height.

D. Setbacks
A new or expanded wireless telecommunications facility must comply with the applicable setback requirement of the Town of Sullivan, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside of the property boundaries if secured by an easement.
Section 7 Standards of Review (continued)

The following exemptions apply:

1. The setback may be reduce by the PB upon showing that the facility is designed to collapse in a manner that will not harm other property.

2. An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon the abutting property.

E. Landscaping.
A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

F. Fencing.
A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

G. Lighting.
A new wireless telecommunications facility shall be illuminated at the top of the facility by an FAA approved lighting apparatus as deemed necessary by the height of said tower. Security lighting may be used as long as it is shielded to be down directional to retain lighting within the boundaries of the site, to the maximum extent practicable.

H. Color and Materials.
A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

I. Structural Standard
A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standards entitled “Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.”

J. Visual Impact.
The proposed wireless telecommunications facility will have no reasonable adverse impact upon designated scenic resources within the Town of Sullivan, as identified by a State or Federal agency.

1. In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the PB shall consider the following factors:
   a. the extent to which the proposed wireless telecommunications facility is visible above the tree line, from the viewpoint (s) of the impacted designated scenic resource.
   b. the type, number, height and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
Section 7 Standards of review (continued)

c. the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
d. the amount of vegetative screening;
e. the distance of the proposed facility from the viewpoint and the facility’s location within the designated scenic resource; and
f. the presence of reasonable alternatives that allow the facility to function consistently with its purpose.
g. the harmonious relationship to established building(s) and their surroundings.

K. Historic and Archaeological Properties.
The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure, which is currently listed on, or eligible for listing on the National Register of Historic Places.

L. Location Within The Town.
No Wireless Telecommunications Tower(s) shall be located with the 250’ Shoreland Zoning District as defined in the Sullivan Shoreland Zoning Ordinance or within the 100 year Flood Plain Area as designated by Federal Flood Plain Plan.

SECTION 7.2 STANDARD CONDITIONS OF APPROVAL

The following standard conditions of approval shall be a part of any approval or conditional Approval issued by the PB. Where necessary to ensure that an approved project meets the criteria of this Ordinance and the Town of Sullivan Building Code Ordinance, the PB can impose additional conditions of approval. Reference to the conditions or approval shall be clearly noted on the final approved site plan and shall include:

A. The owner of the wireless telecommunications facility and his or her successor and assigns agree to:

1. Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
2. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
3. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location;
4. Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the cost of adapting the tower or equipment to accommodate a shared use without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

B. Upon request by the Town of Sullivan, the applicant shall certify compliance with all applicable FCC radio frequency emission regulations.
SECTION 8  AMENDMENT TO AN APPROVED APPLICATION

Any changes to an approved application must be approved by the PB in accordance with Town of Sullivan Building Code Ordinance and this Ordinance.

SECTION 9  ABANDONMENT

A wireless telecommunications facility that is not operated for a continuous period of one (1) year shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the Town of Sullivan may remove the facility at the owner’s expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return this site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the Town of Sullivan for removal of the facility, the owner of the facility may apply to the PB for release of the surety when the facility and related equipment are removed to the satisfaction of the PB.

SECTION 10  APPEALS

Any person aggrieved by a decision of the PB under this Ordinance may appeal the decision to the Selectmen or Board of Appeals as provided by Section 13, of the Building Code Ordinance.

SECTION 11  ADMINISTRATION AND ENFORCEMENT

The CEO, as appointed by the Board of Selectmen, shall enforce this Ordinance. If the CEO finds that any provision of this Ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action necessary to ensure compliance with the Ordinance.

The Board of Selectmen, or their authorized agent, is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreement shall not allow a violation of this Ordinance to continue unless:

There is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith, the removal of the violation will result in a threat to public health and safety, abutting property de-valuation, or substantial environmental damage.
SECTION 12 PENALTIES

Any person who owns or controls any building or property that violates this Ordinance shall be fined in accordance with Title 30-A, M.R.S.A., Section 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

SECTION 13 CONFLICT AND SEVERABILITY

13.1 Conflicts with other Ordinances.

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall apply.

13.2 Severability

The invalidity of any part of this Ordinance shall not invalidate any other part of this Ordinance.

SECTION 14 AMENDMENTS TO TOWER ORDINANCE

A. On written petition of a number of voters equal to at least 10% of the number of votes cast in the municipality at the last gubernatorial election, or on the recommendation of the Selectmen who may present warrants for consideration by the Town to amend, supplement, or repeal the regulations and provisions this Ordinance.

B. After a public hearing on proposed amendment(s), this Ordinance may only be amended by a majority vote of an Annual Town Meeting.

SECTION 15 DEFINITIONS

The terms used in this Ordinance shall have the following meanings:

Abutter: means any land owner abutting the property that the tower or facility will be located on.

Antenna: means any system of poles, panels, rods, reflecting disc or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

Antenna Height: means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if mid highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade or the facility site. If the support structure is on a sloped grad then the average between the highest and lowest grades shall be used in calculating the antenna height.

Co-location: means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.
Section 15 Definitions (continued)

Expansion: means the addition of antennas, towers, or other devices to an existing structure.

FAA: means the Federal Aviation Administration, or its lawful successor

FCC: means the Federal Communications Commission, or its lawful successor

Height: means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point or the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other buildings accessory features usually erected at a height greater than the main roofs of buildings.

Historic or Archaeological Resources: means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been verified by the Secretary of the Interior through the Maine Historic Preservation Commission; or
5. Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the Town of Sullivan's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

Historic Landmark: means any improvement, building or structure of particular historic or architectural significance to the town relating to its heritage, cultural, social, economic or political history, or which exemplifies lust ode personages or important events in local, state or national history identified in the Town of Sullivan's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

Line of Sight: means the direct view of the object from the designated scenic resource.

Parabolic Antenna: (also known as a satellite dish antenna) means an antenna which is bowl shaped, designed for the reception and/or transmission of radio frequency communication signals in a specific direction pattern.

Principal Use: means the use other than the one which is wholly incidental or accessory to another use on the same premises.
Section 15 Definitions (continued)

Public Recreational Facility: means a regionally or locally significant facility, as defined and identified either by State statute or in the Town of Sullivan's comprehensive plan, designed to serve the recreational needs of municipal property owners.

Designated Scenic Resource: means the specific location, view, or corridor, as identified as a scenic resource in the Town of Sullivan's comprehensive plan or by a State or Federal agency, that consists of:

1. A three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or a mountain range, resulting in a panoramic view corridor; or
2. Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

Targeted Market Coverage Area: means the area which is targeted to be served by this proposed telecommunications facility.

Unreasonable Adverse Impact: means that the proposed project would produce an end result, which is:

1. Excessively out-of-character with the designated scenic resources affected, including existing buildings, structures and features within the designated scenic resource; and
2. Would significantly diminish the scenic value of the designated scenic resource.
3. Would impact the health, welfare, or safety of surrounding buildings, residents, and their properties, including but not limited to health, financial, or property values.

Viewpoint: means the location which is identified either in the Town of Sullivan's Comprehensive plan or by a State or Federal agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

Wireless Telecommunications Facility: means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services and personal (PCS) or pager services.